

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

PACIFIC INDUSTRIAL ELECTRIC, INC.

Employer

and

Case 36-RC-6120

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 280

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6)(7) of the Act, for the following reasons:

The Employer is engaged in electrical construction in various states including Oregon. It is headquartered in Fruita, Colorado. The Petitioner requests a geographic unit of all electricians, including apprentices, employed by the Employer within Petitioner's territorial jurisdiction, excluding statutory supervisors. Petitioner's territorial jurisdiction includes all of Benton, Crook, Deschutes, Jefferson, Linn, Marion and Polk counties, and part of Lane and Yamhill counties, all in the State of Oregon. The Employer contends that the petition should be dismissed because: 1) as a geographic

¹ The parties filed briefs, which have been considered.

unit that has no relationship to the Employer's operations, it is inappropriate, and 2) there are less than four months of proposed unit work remaining. Alternatively, the Employer contends that the laborers share a community of interest with the electricians, and should be included in any unit found by the Board.²

The record establishes that the Employer has successfully bid for work on several pump stations along a Pacific Gas and Electric, Gas Transmission Northwest pipeline (herein "the Pipeline") that runs from the Canadian border through Idaho to the border of California. In the state of Oregon, the Employer has performed work at four pump stations on the Pipeline: Pump Stations 10, 11, 12, and 14. Of these, only Pump Station 12, located in Deschutes County, employs petitioned-for unit employees. Pump Station 10, located in Jefferson County, is within the territorial jurisdiction of Petitioner. However, the work done there is not electrical work, and the Employer's vice president, Andy Hamaker, testified without contradiction that no electricians are employed there. Pump Stations 11 and 14 are not within the geographic area described in the petitioned-for unit.

The work at Pump Stations 10, 11, 12, and 14 is or was overseen by Employer's construction manager, Steve Smith, who hires electricians employed at the jobs. At Pump Station 12, about five of the 12 non-supervisory electricians were hired locally, and had not worked for the Employer before being hired for that project. The remainder had worked for the Employer before, and were either rehired or transferred to the work at Pump Station 12 from other locations. First year apprentice electricians are paid \$10 per hour, and journeymen electricians are paid \$23 per hour. In addition to electricians, the Employer employs laborers at Pump Station 12, who earn \$10 per hour. About ninety percent of laborers' time is spent digging trenches, and packing rebar for running conduit. The majority of the electricians' time is spent running the underground conduit, and installing electrical equipment. Electricians are required to be licensed by the State of Oregon in their trade. No licensing is required for laborers. The record establishes that about one percent of the electricians' time is spent digging with shovels. Electricians and laborers have the same hours and holidays, answer to the same supervisor, and use the same breakroom and bathroom.

Petitioner claims that the Employer can be expected to secure future bids of proposed-unit work. In support of this claim, Petitioner's witness testified that he attended a meeting held by the Department of Environmental Quality and the Pipeline in which a representative from the Pipeline stated that the Pipeline is planning to do expansion work on the odd-numbered stations in 2003 and 2004. Additionally, Petitioner's witness testified that Hamaker told him that the Employer had "five years worth or work" coming up in Petitioner's area. Petitioner's witness testified that Hamaker offered no specifics as to what type of work was anticipated, or where it would be performed.

² Additionally, Petitioner initially sought to exclude from the unit Mark Wolter, whom the Employer contended was not a supervisor under Section 2(11) of the Act. During the hearing, the parties stipulated that Wolter did not possess any supervisory authority, and was thus not a supervisor under Section 2(11) of the Act.

The record establishes that the Employer's project at Pump Station 12 was shut down on March 6, 2002, and at the time of the hearing, no employees were on site.³ Employer witness Hamaker testified, without contradiction, that operations at Pump Station 12 will resume on May 6, 2002, and that the project will take between two and two and one-half months to complete. If available, those persons who had been working at Pump Station 12 before the shutdown will be rehired. If necessary, the Employer will also look to their organization for long term employees who may have come available by that time. The Employer is not currently performing proposed-unit work in any of the other eight counties in the proposed unit. Further, with the exception of Jefferson County, where the Employer performed work five years ago, the Employer has not performed work in the past in any of the counties in the proposed unit. Additionally, the record establishes that the Employer has not bid for any future work within the proposed geographic unit. Typically, the Employer is invited to bid on a pipeline project by a general contractor. Further, even if it were to bid on future work within the unit, there is no guarantee that the Employer's bid would be successful.

The Board has consistently held that when a job is scheduled for completion within four months, no useful purpose is served by determining representation. *M.B. Kahn Construction Co., Inc.*, 210 NLRB 1050.; *General Motors Corp.*, 88 NLRB 119 (1950); *Todd-Galveston Dry Docks*, 54 NLRB 625 (1944); *Fraser-Brace Engineering Co.*, 38 NLRB 1263 (1942); and *Fruco Construction Co.*, 38 NLRB 991 (1942). Additionally, when a current project is nearing completion, the Board considers whether the Employer has bid on future projects, or completed recent projects within the same geographic region of the unit sought. *Fish Engineering & Construction Partners, Ltd.*, 308 NLRB 836 (1992). In the instant case, the record establishes that the laid off employees from Pump Station 12 have a reasonable expectation of being recalled when operations resume in May of 2002. However, aside from the single project at Pump Station 12, which will be completed within four months, the Employer has no ongoing electrical construction projects within the geographical scope of the unit, nor has it bid for such work. In my view, Petitioner's assertions regarding the Employer's expectation of future projects on the Pipeline, in the absence of having bid for such work, are purely speculative. Further, the Employer has completed no recent projects within the petitioned-for region. In light of these facts, no useful purpose is served by proceeding to an election. Since there is no QCR pending, I shall dismiss the petition in this matter.

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Under the foregoing circumstances, I find it unnecessary to resolve any of the other issues raised by the parties in this petition.

³ On March 11, 2002, Petitioner filed charge 36-CA-8977 alleging discrimination based on union activity, but has requested that the ULP charge not block the processing of petition.

⁴ If evidence indicated that within the next six months the petitioned-for unit still existed, or will exist substantially beyond the current anticipated completion date, or that the Employer acquired new work within the petitioned-for unit, I would entertain a timely filed motion to re-open this case. This statement does not imply that the petitioned-for unit is now, or would be then, an appropriate unit, either as to classification scope or geographic scope.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by April 11, 2002.

DATED at Seattle, Washington, this 28th day of March 2002.

Paul Eggert, Regional Director
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